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*Attorneys for Defendants*  
*M. Cate, M. Creed, S. Ellery, B. Grenert, P.*  
*Harman, G. Lewis, K. Ohland, R. Tupy, T. Wood,*  
*and M. Sayre*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

**MICHAEL ROMERO,**

Plaintiff,

**v.**

**S. ELLERY, et al.,**

Defendants.

C 12-1084 WHO (PR)

**DEFENDANTS' CASE MANAGEMENT  
 STATEMENT**

Judge: The Honorable William H.  
 Orrick

Action Filed: December 16, 2011

Defendants M. Cate, M. Creed, S. Ellery, B. Grenert, P. Harman, G. Lewis, K. Ohland, R. Tupy, T. Wood, and M. Sayre (Defendants), pursuant to the Court's June 27, 2013 Reassignment Order, respectfully submit their Case Management Statement.

**a. Date Filed.** The lawsuit was originally filed in Del Norte County Superior Court on December 16, 2011.

**b. Parties.** Plaintiff Michael Romero, an inmate at Pelican Bay State Prison (Pelican Bay), Defendants M. Cate, the former Secretary of the California Department of Corrections and Rehabilitation (CDCR), G. Lewis, Warden at Pelican Bay, T. Wood, a correctional captain at

1 Pelican Bay, K. Ohland, a correctional lieutenant at Pelican Bay, R. Tupy, a correctional  
2 lieutenant at Pelican Bay, M. Sayre, a medical doctor at Pelican Bay, M. Creed, a licensed  
3 vocation nurse at Pelican Bay, B. Grenert, a correctional sergeant at Pelican Bay, S. Ellery and P.  
4 Harman, correctional officers at Pelican Bay.

5 **c. Claims.** Plaintiff claims that: (1) Ellery, Harman, and Grenert used excessive  
6 force against him, (2) Cate, Tupy, Ohland, and Wood failed to adequately train their staff  
7 resulting in excessive force, (3) Cate and Lewis failed to investigate the alleged use of force, (4)  
8 Tupy and Wood violated his right to due process at this disciplinary hearing, (5) Ellery, Harman,  
9 Grenert, and Creed were deliberately indifferent to his medical needs, and (6) Cate, Lewis, and  
10 Sayre's failure to supervise resulted in the deliberate indifference to his medical needs.

11 **d. Facts.** On April 23, 2011 during a pod search in Pelican Bay's Facility D4,  
12 Officers Ellery and Harman opened the food port to Plaintiff's cell in an attempt to search  
13 Plaintiff's cell. Plaintiff then ran to the back of his darkened cell. After Ellery and Harman  
14 ordered Plaintiff to turn on his light and submit to handcuffs, Plaintiff refused to comply and  
15 reached for an unknown object in the vicinity of his mattress. Officer Ellery believing there was  
16 an unacceptable risk that Plaintiff was reaching for a weapon sprayed the Plaintiff with pepper  
17 spray. Eventually Plaintiff complied with Ellery and Harman's orders and submitted to  
18 handcuffing. Plaintiff was then escorted to the B pod shower for pepper spray decontamination.

19 **e. Relief Sought.** Plaintiff seeks a declaratory judgment that Defendants violated  
20 Plaintiff's rights, a preliminary and permanent injunction for Defendants to cease their  
21 objectionable behavior, a jury trial, total and complete indemnity for any judgment rendered  
22 against Plaintiff, judgment in a proportional share for each Defendant, a jury determination that  
23 Defendants caused his damages and that Defendants indemnify him for any damages rendered  
24 against him, compensatory damages in an amount to be proven at trial, \$157.46 for economic loss  
25 of property, \$100,000 for pain, suffering, and injuries, \$50,000 in exemplary damages jointly and  
26 severally against Defendants Ellery, Harman, and Grenert.

27 **f. Discovery Status.** On April 2, 2013, Plaintiff served a first set of common  
28 interrogatories on Defendants Ellery, Harman, Grenert, Tupy, Ohland, Wood, Lewis, Cate, Sayre,

1 and Creed. On May 3, 2013, the parties agreed to extend the deadline for the Defendants to  
2 respond and object to the first set of common interrogatories until July 5, 2013. On July 3, 2013,  
3 the parties agreed to extend the deadline for Defendants Cate and Lewis to respond to the first of  
4 common interrogatories until August 19, 2013. On July 5, 2013, Defendants Ellery, Harman,  
5 Grenert, Tupy, Ohland, Wood, Sayre, and Creed each served interrogatory responses and  
6 objections to Plaintiff's first set of interrogatories.

7 **g. Procedural History.** On March 5, 2012, Defendants filed a notice of removal from  
8 Del Norte County Superior Court to the Northern District of California and filed a waiver of  
9 reply. On January 17, 2013, the Court screened Plaintiff's First Amended Complaint under 28  
10 U.S.C. § 1915A. The Court found that Plaintiff stated cognizable § 1983 claims against the  
11 Defendants Cate, Creed, Ellery, Grenert, Harman, Lewis, Ohland, Tupy, Wood, and Sayre. The  
12 screening order directed Defendants to file a motion for summary judgment or other dispositive  
13 motion within ninety days of the date of its Order of Service, resulting in an April 17, 2013  
14 deadline. Defendants sought and on April 19, 2013 the Court granted a ninety day extension of  
15 time to file a dispositive motion until July 15, 2013.

16 **h. Deadlines.** Currently, there is a July 15, 2013 dispositive motion deadline.

17 **i. Modifications.** Defendants are concurrently requesting a sixty day extension of the  
18 dispositive deadline until September 13, 2013.

19 **j. Magistrate Judge.** Defendants do not believe that this case is appropriate for trial  
20 before a Magistrate Judge.

1           **k.     Need for Case Management Conference.**     Defendants do not believe there is  
2 need for a case management conference until after the Court rules on Defendants' dispositive  
3 motion, which will be filed on or before September 13, 2013.

4  
5 Dated: July 12, 2013

Respectfully submitted,

6 KAMALA D. HARRIS  
7 Attorney General of California  
8 DANIELLE F. O'BANNON  
Supervising Deputy Attorney General

9  
10 /s/ D. Robert Duncan  
D. ROBERT DUNCAN  
Deputy Attorney General  
Attorneys for Defendants  
M. Cate, M. Creed, S. Ellery, B. Grenert, P.  
Harman, G. Lewis, K. Ohland, R. Tupy, T.  
Wood, and M. Sayre

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## CERTIFICATE OF SERVICE

Case Name: **Romero v. Ellery, et al.**

No. **C 12-1084 RS**

I hereby certify that on July 12, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **DEFENDANTS' CASE MANAGEMENT STATEMENT**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On July 12, 2013, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

**Michael Romero**  
**(K-29169)**  
**Pelican Bay State Prison**  
**P.O. Box 7000**  
**Crescent City, CA 95531-7000**  
*Pro Se*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 12, 2013, at San Francisco, California.

L. Santos

Declarant

/s/ L. Santos

Signature